

**BEFORE THE NEBRASKA TAX EQUALIZATION  
AND REVIEW COMMISSION**

DOUBLE J REALTY & MANAGEMENT INC.,	)	
	)	
Appellant,	)	Case Nos 06C-570, 06C-571, 06C-572,
	)	06C-573, 06C-574, 06C-575, 06C-576, and
v.	)	06C-577
	)	
LANCASTER COUNTY BOARD OF EQUALIZATION,	)	DECISION AND ORDER AFFIRMING
	)	THE DECISIONS OF THE LANCASTER
Appellee.	)	COUNTY BOARD OF EQUALIZATION

The above-captioned cases were called for a hearing on the merits of appeals by Double J Realty & Management Inc. ("the Taxpayer") to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Commission's Hearing Room on the sixth floor of the Nebraska State Office Building in the City of Lincoln, Lancaster County, Nebraska, on March 6, 2008, pursuant to an Order for Hearing and Notice of Hearing issued December 26, 2007. Commissioners Wickersham, Warnes, and Salmon were present. Commissioner Hotz was excused from participation by the presiding hearing officer. The appeal was heard by a panel of three commissioners pursuant to 442 Neb. Admin. Code, ch. 4, §11 (10/07). Commissioner Wickersham presided at the hearing.

Michael L. Jeffrey, President of the Taxpayer was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Michael E. Thew, a Deputy County Attorney for Lancaster County, Nebraska, appeared as legal counsel for the Lancaster County Board of Equalization ("the County Board").

The Commission took statutory notice, received exhibits and heard testimony.

The Commission is required by Neb. Rev. Stat. §77-5018 (Cum. Supp. 2006) to state its final decision and order concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. The final decision and order of the Commission in the consolidated cases is as follows.

## **I. ISSUES**

The Taxpayer has asserted that actual value of the subject property as of January 1, 2006, is less than actual value as determined by the County Board. The issues on appeal related to that assertion are:

Whether the decision of the County Board determining actual value of the subject property is unreasonable or arbitrary; and

The actual value of the subject property on January 1, 2006.

The Taxpayer has asserted that taxable value of the subject property as of January 1, 2006, is not equalized with the taxable value of other real property. The issues on appeal related to that assertion are:

Whether the decision of the County Board determining the equalized taxable value of the subject property is unreasonable or arbitrary;

Whether the equalized taxable value of the subject property was determined by the County Board in a manner and an amount that is uniform and proportionate as required by Nebraska's Constitution in Article VIII §1; and

The equalized taxable value of the subject property on January 1, 2006.

**II.  
FINDINGS OF FACT**

The Commission finds and determines that:

1. The Taxpayer has a sufficient interest in the outcome of the above captioned appeals to maintain them.
2. The parcels of real property to which the above captioned appeals pertain are described in the tables below and together comprise ("the subject property").
3. Actual value of each parcel of the subject property placed on the assessment roll as of January 1, 2006, ("the assessment date") by the Lancaster County Assessor, value as proposed in timely protests, and actual value as determined by the County Board is shown in the following tables:

Case No. 06C-570

Description: Lot 10, Block 3, Eastborough Sub, Lincoln, Lancaster County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$30,000.00	In Total	In Total
Improvement	\$55,014.00	In Total	In Total
Total	\$85,014.00	\$70,900.00	\$85,014.00

Case No. 06C-571

Description: Lot 1, Block 4, Eastborough Sub, Lincoln, Lancaster County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$27,000.00	In Total	In Total
Improvement	\$56,445.00	In Total	In Total
Total	\$83,445.00	\$79,100.00	\$83,445.00

Case No. 06C-572

Description: Lot 4, Block 4, Eastborough 2<sup>nd</sup> Add, Lincoln, Lancaster County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$30,000.00	In Total	In Total
Improvement	\$54,097.00	In Total	In Total
Total	\$84,097.00	\$73,900.00	\$84,097.00

Case No. 06C-573

Description: Lot 8, Block 5, Eastborough Sub, Lincoln, Lancaster County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$27,000.00	In Total	In Total
Improvement	\$59,218.00	In Total	In Total
Total	\$86,218.00	\$71,700.00	\$86,218.00

Case No. 06C-574

Description: Lot 9, Block 6, Eastborough 2<sup>nd</sup> Add, Lincoln, Lancaster County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$30,000.00	In Total	In Total
Improvement	\$52,440.00	In Total	In Total
Total	\$82,440.00	\$72,800.00	\$82,440.00

Case No. 06C-575

Description: Lot 20, Block 12, Eastborough 2<sup>nd</sup> Add, Lincoln, Lancaster County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$27,000.00	In Total	In Total
Improvement	\$52,470.00	In Total	In Total
Total	\$79,470.00	\$72,000.00	\$79,470.00

Case No. 06C-576

Description: Lot 80 N 72', Woods Bros Fairview Acres Lincoln, Lancaster County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$30,000.00	In Total	In Total
Improvement	\$57,179.00	In Total	In Total
Total	\$87,179.00	\$75,900.00	\$87,179.00

Case No. 06C-577

Description: Lot 106 N 88', Woods Bros Fairview Acres, Lincoln, Lancaster County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$30,000.00	In Total	In Total
Improvement	\$52,268.00	In Total	In Total
Total	\$82,268.00	\$66,200.00	\$82,268.00

4. Appeals of the County Board's decisions were filed with the Commission.
5. The County Board was served with Notices in Lieu of Summons and duly answered those Notices.
6. The appeals were consolidated for hearing by order of the Commission.

7. An Order for Hearing and Notice of Hearing issued on December 26, 2007, set a hearing of the appeals for March 6, 2008, at 9:00 a.m. CST.
8. An Affidavit of Service which appears in the records of the Commission establishes that a copy of the Order for Hearing and Notice of Hearing was served on all parties.
9. The hearing was held before a panel of the Commission. 442 Neb. Admin. Code, ch 4 §11.01 (10/07).
10. Actual value of each parcel for the tax year 2006 is:

Case No. 06C-570

Land value	\$30,000.00
Improvement value	<u>\$55,014.00</u>
Total value	<u>\$85,014.00</u>

Case No.06C-571

Land value	\$27,000.00
Improvement value	<u>\$56,445.00</u>
Total value	<u>\$83,445.00</u>

Case No.06C-572

Land value	\$30,000.00
Improvement value	<u>\$54,097.00</u>
Total value	<u>\$84,097.00</u>

Case No.06C-573

Land value	\$27,000.00
Improvement value	<u>\$59,218.00</u>
Total value	<u><u>\$86,218.00</u></u>

Case No.06C-574

Land value	\$30,000.00
Improvement value	<u>\$52,440.00</u>
Total value	<u><u>\$82,440.00</u></u>

Case No.06C-575

Land value	\$27,000.00
Improvement value	<u>\$52,470.00</u>
Total value	<u><u>\$79,470.00</u></u>

Case No.06C-576

Land value	\$30,000.00
Improvement value	\$57,179.00
Total value	<u><u>\$87,179.00</u></u>

Case No.06C-577

Land value	\$30,000.00
Improvement value	<u>\$52,268.00</u>
Total value	<u><u>\$82,268.00</u></u>

**III.  
APPLICABLE LAW**

1. Subject matter jurisdiction of the Commission in each of the above captioned appeals is over issues raised during the county board of equalization proceedings. *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equalization*, 7 Neb.App. 655, 584 N.W.2d 353 (1998).
2. "Actual value of real property for purposes of taxation means the market value of real property in the ordinary course of trade. ... Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used." Neb. Rev. Stat. §77-112 (Reissue 2003).
3. "Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach." Neb. Rev. Stat. §77-112 (Reissue 2003).
4. Use of all of the statutory factors for determination of actual value is not required. All that is required is use of the applicable factors. *First National Bank & Trust of Syracuse v. Otoe Cty.*, 233 Neb. 412, 445 N.W.2d 880 (1989).

5. “Actual value, market value, and fair market value mean exactly the same thing.”  
*Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 ( 2002).
6. Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value. Neb. Rev. Stat. §77-131 (Reissue 2003).
7. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Cum. Supp. 2006).
8. “Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution.” Neb. Const. art. VIII, §1
9. Equalization to obtain proportionate valuation requires a comparison of the ratio of assessed to actual value for the subject property and comparable property. *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).
10. Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity. *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).
11. Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value. *Equitable*

*Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

12. The constitutional requirement of uniformity in taxation extends to both rate and valuation. *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).
13. In the evaluation of real property for tax purposes, where buildings and improvements are taxable as a part of the real estate, the critical issue is the actual value of the entire property, not the proportion of that value which is allocated to the land or to the buildings and improvements by the appraiser. *Bumgarner v. Valley County*, 208 Neb. 361, 303 N.W.2d 307 (1981).
14. A presumption exists that the County Board has faithfully performed its duties and has acted on competent evidence. *Omaha Country Club v. Douglas County Bd. of Equalization*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
15. The presumption in favor of the county board may be classified as a principle of procedure involving the burden of proof, namely, a taxpayer has the burden to prove that action by a board of equalization fixing or determining valuation of real estate for tax purposes is unauthorized by or contrary to constitutional or statutory provisions governing taxation. *Gordman Properties Company v. Board of Equalization of Hall County*, 225 Neb. 169, 403 N.W.2d 366 (1987).
16. The presumption disappears if there is competent evidence to the contrary. *Id.*
17. Competent evidence means evidence which tends to establish the fact in issue. *In re Application of Jantzen*, 245 Neb. 81, 511 N.W.2d 504 (1994).

18. The Taxpayer has a burden to adduce evidence that the decision, action, order, or determination appealed from was unreasonable or arbitrary as prescribed by statute.  
*City of York v. York County Bd. of Equalization*, 266 Neb. 297, 664 N.W.2d 445 (2003)
19. The Commission may not grant relief unless it is shown that the action of the County Board was unreasonable or arbitrary. Neb. Rev. Stat. §77-5016 (8) (Cum. Supp. 2006),
20. Proof that the action of the County Board was unreasonable or arbitrary must be made by clear and convincing evidence. See, e.g. *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
21. "Clear and convincing evidence means and is that amount of evidence which produces in the trier of fact a firm belief or conviction about the existence of a fact to be proved."  
*Castellano v. Bitkower*, 216 Neb. 806, 812, 346 N.W.2d 249, 253 (1984).
22. A decision is "arbitrary" when it is made in disregard of the facts and circumstances and without some basis which could lead a reasonable person to the same conclusion.  
*Phelps Cty. Bd. of Equal. v. Graf*, 258 Neb 810, 606 N.W.2d 736 (2000).
23. A decision is unreasonable only if the evidence presented leaves no room for differences of opinion among reasonable minds. *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb 390, 603 N.W.2d 447 (1999).
24. A corporate officer or other representative of an entity, must be shown to be familiar with the property in question and have a knowledge of values generally in the vicinity to be qualified to offer an opinion of value. *Kohl's Dept. Stores v. Douglas County Bd. of Equal.*, 10 Neb.App. 809, 638 N.W.2d, 881 (2002).

25. The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).
26. A Taxpayer, who only produced evidence that was aimed at discrediting valuation methods utilized by county assessor, failed to meet burden of proving that value of property was not fairly and proportionately equalized or that valuation placed upon property for tax purposes was unreasonable or arbitrary. *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983).
27. Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued. Cf. *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981); *Arenson v. Cedar County*, 212 Neb. 62, 321 N.W.2d 427 (1982) (determination of equalized values); and *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value).

#### **IV. ANALYSIS**

Each parcel of the subject property is improved with a single family residence. The Taxpayer's President testified that the parcels and their improvements were properly described in the county assessor's records. The attributes of each parcel and its improvements vary but are

not material to a decision on the appeals. Each parcel is used for single family residential rental purposes by the Taxpayer. County Board determined actual value of each parcel based on the sales comparison approach. The Taxpayer asserts that actual value of each parcel must be determined by use of the income approach because the parcels are each used for the production of income as single family residential rentals. The Taxpayer based that assertion on the belief that use of the income approach is required by section 77-112 of Nebraska Statutes or Neb. Const. art. VIII, §1. The Taxpayer's final claim is that actual value as determined using the income approach is less than actual value as determined by the County Board using the sales comparison approach.

#### **Valuation Method as Provided by Statute**

"Actual value of real property for purposes of taxation means the market value of real property in the ordinary course of trade. ... Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used." Neb. Rev. Stat. §77-112 (Reissue 2003). The Taxpayer argues that the ordinary course of trade for the subject properties is their use as single family residential rentals. The County Board argues that a parcel's actual value must be determined based on its highest and best use because that is the use for which the greatest value would be assigned by a willing buyer and a willing seller both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. Highest and best use can be described as the foundation on which market value rests. ” *The*

*Appraisal of Real Estate*, 12<sup>th</sup> Edition, The Appraisal Institute, 2001, p 305. Land is to be valued at its highest and best use. 350 Neb. Admin. Code, ch. 50, §.00204A (01/07); cf *Lincoln Branch Inc. v. City of Lincoln*, 245 Neb. 272, 512 N.W.2d 379 (1994), (fair market value of condemned real estate determined based on its highest and best use). Highest and best use is defined as the most reasonable and most probable use of the property that will support its highest value. 350 Neb. Admin. Code Ch 10 § 001.13 (01/07). An analysis of highest and best use requires consideration of factors which would affect potential use of the land. Among the factors to be considered are whether a potential use is; physically possible, lawful, financially feasible, and whether it produces the greatest value. See. *The Appraisal of Real Estate*, 12<sup>th</sup> Edition, The Appraisal Institute, 2001, p 307.

The evidence in this proceeding is that use of each parcel for either single family residential rental or single family residential owner occupied purposes is physically, legally and financially feasible. The sole remaining question is which use might produce the greatest value. The County Board determined value for each parcel using the sales comparison approach. Actual value of the subject property was determined with reference to sales of comparable single family residential parcels without regard to whether they were owner or tenant occupied. The Taxpayer has attempted to show that if actual value is determined through use of the income approach that it is lower than the value indicated by the sales comparison approach and that use of the income approach is required by statute. Section 77-112 of Nebraska Statutes cannot be read to require use of a valuation method that does not estimate value based on the highest and best use of the parcel or the value that is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length

transaction, between a willing buyer and willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. The Taxpayer's assertion that the income approach must be used to determine actual value of parcels in the subject property is not persuasive.

### **Valuation as Required by Nebraska's Constitution**

“Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution.” Neb. Const. art. VIII, §1. The Taxpayer asserts that the parcels of the subject property were not valued uniformly with other parcels being used for residential rental purposes. An appraiser for Lancaster County testified that during tax year 2006, actual value of residential parcels with units for one or two families was determined based on the sales comparison approach, that the actual value of residential parcels with units for three families was determined based on either the sales comparison approach or the income approach and that residential parcels with units for more than three families was determined based on the income approach. Uniformity does not require use of the same method for the valuation for all parcels *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

Uniformity does require that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity. *Id.* It is the Taxpayer's burden to show that taxable values for the parcels of the subject property and the taxable value of other single family residential parcels with three or more units are not correlated to a common standard, i.e. actual value. See, *Id.* The standard for valuation of the parcels of the subject property was actual value. There is no evidence that assessed value of

residential parcels with three or more rental units for the tax year 2006, are less than actual value.

The Taxpayer's claim that Nebraska's Constitution requires use of the income approach for valuation of the parcels of the subject property is not persuasive.

### **Actual value of the Parcels in the Subject Property**

The Taxpayer's President testified that actual value of each parcel for the tax year 2006, should be those amounts shown in Exhibit 2 at page 25 for the appeals in Case Nos. 06C-570 through 06C-575 and in Exhibit 2 at page 17 for the appeals in Case Nos. 06C-576 and 577. Each parcel of the subject property is identified on those pages by its street address and information in columns labeled gross annual rent per lease, gross annual expense, net op income, cap on gross income 10.5% and cap on NOI 10.5% is provided. The Taxpayer's President testified that the values shown in the column labeled cap on gross 10.5% represented his opinion of actual value for each parcel based on use of the income approach.

The Income Approach can be defined as "a set of procedures through which an appraiser derives a value indication for an income-producing property by converting its anticipated benefits (cash flows and reversion) into property value. This conversion can be accomplished in two ways. One year's income expectancy can be capitalized at a market-derived rate or at a capitalization rate that reflects a specified income pattern, return on investment, and change in the value of the investment. Alternatively, the annual cash flows for the holding period and the reversion can be discounted at a specified yield rate." *The Dictionary of Real Estate Appraisal*, Fourth Edition, Appraisal Institute, p.143, (2002). The steps required for use of the income approach with direct capitalization may be summarized as

(1) estimate potential gross income; (2) deduct estimated vacancy and collection loss to determine effective gross income; (3) deduct estimated expenses to determine net operating income; (4) divide net operating income by an estimated capitalization rate to yield indicated value. *The Appraisal of Real Estate* 12<sup>th</sup> Edition, The Appraisal Institute, 2001, pp. 493 - 494. A variety of techniques may be used to quantify various components of any application of the approach. *Supra*, at chs 20-24, (2001).

Three major methods are used to develop an indication of value using the income approach: direct capitalization; yield capitalization; and a discounted cash flow analysis. *Id.* The direct capitalization method produces an indication of value based on a single year's estimated income. *Supra*, at 529. A yield capitalization method requires an analysis of income and expected returns over multiple years. *Supra*, at 549. Discounted cash flow analysis is a refinement of the yield capitalization method in which a reversionary value is added to the indicated value of the income stream. *Supra*, at 569. A reversionary value is added on the assumption that the asset producing an income stream still exists and has value at the end of the period. *Id.* That value is discounted to present value as of the valuation date and added to the value of the income stream. *Supra*, at ch 24.

An estimate of value using the income approach may also be obtained based on gross income and a gross income multiplier. *Supra* at 546-547. A gross income multiplier can be obtained by dividing the sale price of a comparable parcel by their potential gross incomes. *Supra* at 547. The gross income of the property for which value is to be estimated is then multiplied by the gross income multiplier. *Supra* at 546-547.

The estimate of actual value adopted by the Taxpayer's President was obtained by dividing the amount shown in the column labeled gross annual rent per lease by 10.5%. The Taxpayer's President testified that the amount shown in the column labeled gross annual rent per lease was the amount that would be obtained if the parcel at the address shown was rented for a full year. The divisor of 10.5% was derived from advice he had obtained from a realtor. The income approach as estimate of value as adopted by the Taxpayer's President is not a capitalization of net income as described in appraisal literature because it relies on gross rather than net income and it is not the use of a gross rent multiplier because it capitalizes gross income. The Commission has been unable to find any references in the literature available to it that describe or identify the method of valuation adopted by the Taxpayer as an accepted valuation method or technique.

The Taxpayer's reliance on actual expenses of the subject property is not in accordance with generally accepted appraisal practice. "The income and expenses that are proper and acceptable for income tax purposes are not the same as those that are appropriate for the income approach. Only the reasonable and typical expenses necessary to support and maintain the income-producing capacity of the property should be allowed." *Property Assessment Valuation*, 2<sup>nd</sup> Ed., International Association of Assessing Officers, 1996, p. 204. That position has also been adopted by Nebraska Courts. See, *In re Assessment of OL & B Ry. Co.*, 213 Neb. 71, 75-76, 327 N.W.2d 108, 111 (1982) and *Spencer Holiday House, Inc., v. Board of Equalization of Hall County*, 220 Neb. 607, 371 N.W.2d 286 (1985).

When property is valued for ad valorem tax purposes, taxes should not be considered an expense item." *Property Assessment Valuation*, 2<sup>nd</sup> Ed., International Association of Assessing

Officers, 1996, p. 240. The approved use of taxes is to include a factor for taxes in the capitalization rate. A “loaded” capitalization rate includes the effective tax rate. *Property Assessment Valuation, 2<sup>nd</sup> Ed.*, International Association of Assessing Officers, 1996, p. 233. The capitalization rate used by the County Board for its calculation of the income approach was a loaded capitalization rate. (E6:8). It is not clear whether the capitalization rate used by the Taxpayer is a loaded or unloaded capitalization rate. When the income approach is used, the higher the capitalization rate, the lower the final indicated value. *Property Assessment Valuation, 2<sup>nd</sup> Ed.*, International Association of Assessing Officers, 1996, p. 232. Deducting taxes also lowers value by reducing net income.

Taxes are listed as an expense in the calculations of the Taxpayer as shown in Exhibit 2 at page 30. Deducting taxes as an expense and using a loaded capitalization rate would not be appropriate. Because use of a loaded capitalization rate is favored the Commission has considered the evidence from which the tax factor to be used in development of a loaded capitalization rate might be derived. Taxes are levied as of October 15 each year. Neb. Rev. Stat. 77-1601 (Reissue 2003). Taxes paid as of June 30, 2005, are at best real property taxes assessed for the year 2004. The 2004 taxable values of the parcels of the subject property have not been provided to the Commission. It is not possible to calculate the percentage taxes were of actual value for the tax year 2004. Without that determination development of a loaded capitalization rate based on taxes for the year 2004 is not possible.

The expense deductions of the Taxpayer include a deduction for depreciation. Depreciation is not an appropriate deduction for valuation purposes. *The Appraisal of Real Estate* 12<sup>th</sup> Edition, The Appraisal Institute, 2001, p 521. A replacement allowance is

appropriate. Supra at 519. A replacement allowance is usually estimated as the anticipated cost of replacement prorated over total useful life of a component of an improvement such as an elevator. *Id.* Care must be taken to determine whether repair expenses include costs that might otherwise be associated with a replacement allowance. *Id.* It is unknown whether the depreciation deduction taken by the Taxpayer is equivalent to an allowable replacement allowance.

The Taxpayer's president testified that the income and expenses shown in Exhibit 2 at page 30 represented, potential income and actual expenses of each parcel of the subject property for a fiscal year ending June 30 2005. The actual operating history of a subject property can be considered for appraisal purposes. *The Appraisal of Real Estate* 12<sup>th</sup> Edition, The Appraisal Institute, 2001, pp. 509 - 511. An analysis using the actual operating expenses of a parcel requires a multi-year analysis that is then used as a basis for comparison only with comparable properties. *Id.* Three years of financial information was presented by the Taxpayer to an appraiser, but was not furnished to the Commission. The Taxpayer did not provide income and expense information for any comparable parcels.

The Taxpayer has not relied on the values indicated in the column labeled cap on NOI 10.5% and methods and information used to obtain those numbers will not be analyzed.

The County Board produced summary appraisals indicating that actual value of each parcel of the subject property as of the assessment date exceeded actual value as determined by the County Board. The maximum difference in values as determined by the appraiser and the County Board was 7%.

The Taxpayer has not shown by clear and convincing evidence that the actual or taxable equalized value as determined by the County Board was unreasonable or arbitrary.

**V.  
CONCLUSIONS OF LAW**

1. The Commission has subject matter jurisdiction in this appeal.
2. The Commission has jurisdiction over the parties to this appeal.
3. The Taxpayer has not adduced sufficient, clear and convincing evidence that the decisions of the County Board are unreasonable or arbitrary and the decisions of the County Board should be affirmed.

**VI.  
ORDER**

**IT IS ORDERED THAT:**

1. The decisions of the County Board determining taxable values of the parcels comprising the subject property as of the assessment date, January 1, 2006, are affirmed.
2. Taxable value for the tax year 2006 of each parcel described in an appeal, as referenced by the Case No. is:

Case No. 06C-570

Land value	\$30,000.00
Improvement value	<u>\$55,014.00</u>
Total value	<u><u>\$85,014.00</u></u>

Case No.06C-571

Land value	\$27,000.00
Improvement value	<u>\$56,445.00</u>
Total value	<u><u>\$83,445.00</u></u>

Case No.06C-572

Land value	\$30,000.00
Improvement value	<u>\$54,097.00</u>
Total value	<u><u>\$84,097.00</u></u>

Case No.06C-573

Land value	\$27,000.00
Improvement value	<u>\$59,218.00</u>
Total value	<u><u>\$86,218.00</u></u>

Case No.06C-574

Land value	\$30,000.00
Improvement value	<u>\$52,440.00</u>
Total value	<u><u>\$82,440.00</u></u>

Case No.06C-575

Land value	\$27,000.00
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Land value	\$30,000.00
Improvement value	\$57,179.00
Total value	<u>\$87,179.00</u>

Case No.06C-577

Land value	\$30,000.00
Improvement value	<u>\$52,268.00</u>
Total value	<u>\$82,268.00.</u>

3. This decision, if no appeal is timely filed, shall be certified to the Lancaster County Treasurer, and the Lancaster County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Cum. Supp. 2006).
4. Any request for relief, by any party, which is not specifically provided for by this order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This decision shall only be applicable to tax year 2006.
7. This order is effective for purposes of appeal on March 24, 2008.

**Signed and Sealed.** March 24, 2008.

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Wm. R. Wickersham, Commissioner

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Nancy J. Salmon, Commissioner

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William C. Warnes, Commissioner

**SEAL**

**APPEALS FROM DECISIONS OF THE COMMISSION MUST SATISFY THE REQUIREMENTS OF NEB. REV. STAT. §77-5019 (CUM. SUPP. 2006), OTHER PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.**